

OECA and Regional Report

Week Ending July 15, 2016

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- **Federal Magistrate Recommends Court Dismiss Atlantic Richfield Company's Lawsuit for Declaratory Relief and Injunctive Relief Barring Residential Landowners from Proceeding with Restoration Damages at Anaconda Smelter Superfund Site [*Atlantic Richfield Company v. Gregory Christian, et al.*, CV 15-83-BU-BMM-JCL (D. Mont., July 8, 2016)]**

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Non-confidential items:

Federal Magistrate Recommends Court Dismiss Atlantic Richfield Company's Lawsuit for Declaratory Relief and Injunctive Relief Barring Residential Landowners from Proceeding with Restoration Damages at Anaconda Smelter Superfund Site [*Atlantic Richfield Company v. Gregory Christian, et al.*, CV 15-83-BU-BMM-JCL (D. Mont., July 8, 2016)]

On July 8, 2016, a magistrate judge (magistrate) of the United States District Court for the district of Montana (the district court), granted residential landowners motion for summary judgment dismissing Atlantic Richfield Company's (ARCO) lawsuit against residential landowners in *Atlantic Richfield Company v. Gregory Christian, et al.*, CV 15-83-BU-BMM-JCL (D. Mont., July 8, 2016). On December 22, 2015, Atlantic Richfield Company (ARCO) filed a lawsuit in federal court in Montana against residential land owners, living with the area identified as the Anaconda Superfund Site (the Anaconda Site). ARCO's lawsuit is in response to plaintiffs' state court lawsuit seeking restoration damages for their homes. It alleges plaintiffs' requested relief is impermissible under CERCLA §113(h) and seeks to enjoin them from proceeding with requested restoration actions. Landowners filed a motion to in federal court to dismiss ARCO's complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b). The parties subsequently filed cross-motions for summary judgment pursuant to Federal Rule of Civil Procedure 56. The district court asked the magistrate to review the proceedings and make a recommendation on how the district court should respond to the cross-motions for summary judgment.

The magistrate has issued a ruling in favor of the residential landowners citing controlling Ninth Circuit caselaw. The magistrate stated, the Ninth Circuit has made clear that “[a] declaratory judgment plaintiff may not assert a federal question in his complaint if, but for the declaratory judgment procedure, that question would arise only as a federal defense to a state law claim brought by the declaratory judgment defendant in state court.” Thus, but for ARCO's declaratory judgment action, a federal question regarding application of §113(h) would arise only as a defense to Landowners’ claim for restoration damages. Landowners’ affirmative claim for restoration damages is a state common law claim, and does not arise under federal law. The magistrate said ARCO's carefully crafted claim for declaratory relief is nothing more than an attempt on ARCO’s part, to circumvent the rule that raising a federal defense to a state law claim is not sufficient for purposes of establishing federal question jurisdiction. Accordingly, it held that under Ninth Circuit authority, ARCO's claims for declaratory and injunctive relief cannot be characterized as affirmative federal claims. As a result they do not raise a federal question over which the district court may exercise jurisdiction. The magistrate then noted that it will be for the state court to decide whether the restoration plan residential landowners have proposed in support of their state law claim for restoration damages constitutes an impermissible challenge to ongoing CERCLA cleanup activities at the Anaconda Site in violation of § 113(h). Contact: Clarence Featherson, 202-564-4234.

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